

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

**STEPHEN P. CURTIS,
LIBERTARIAN PARTY OF NEW MEXICO,
CHRIS LUCHINI
and
RANOTA Q. BANKS,**

Plaintiffs,

1:20-CV-00748-JB-JHR

v.

**MAGGIE TOULOUSE OLIVER,
in her official capacity as Secretary of State of New Mexico.**

**DOÑA ANA COUNTY CLERK AMANDA LOPEZ ASKIN'S
MOTION TO QUASH A PORTION OF SUBPOENA TO APPEAR
AND TESTIFY AT A HEARING OR TRIAL IN A CIVIL ACTION**

Doña Ana County Clerk, Amanda Lopez Askin ("Askin"), by and through the Doña Ana County Attorney, Nelson J. Goodin, hereby requests that this Court quash, in part, the subpoena dated August 7, 2020, commanding appearance to testify at a hearing scheduled for August 17, 2020, at 9:30 a.m. and to produce certain documents on or before August 14, 2020, at 5:00 p.m.

On August 10, 2020, Askin received a Subpoena to Appear and Testify at a Hearing or Trial in a Civil Matter. The Subpoena requested the following documents:

- 1) All Libertarian ballots cast in the 2020 primary election in Doña Ana County;
- 2) Tally sheets for Stephen Curtis in the 2020 primary election in Doña Ana County; and
- 3) Canvass or election results for the 2020 primary election for Doña Ana County for Stephen Curtis.

See Exhibit "A".

Clerk Askin is hereby requesting that the portion of the Subpoena requesting "All Libertarian ballots cast in the 2020 primary election in Doña Ana County" be quashed on the

grounds that the ballots are confidential and are in a locked ballot box that under New Mexico law cannot be opened without a court order.

I.

AUTHORITY TO QUASH A SUBPOENA

Federal Rule of Civil Procedure (“FRCP”) 45(d)(3)(A)(iii) requires the court to quash or modify a subpoena that requires the disclosure of “privileged or other protected matter, if no exception of waiver applies.” For the reasons set forth below, Askin maintains that the ballots requested are protected from disclosure and therefore the portion of the Subpoena requesting the ballots should be quashed.

II.

BALLOTS ARE PROTECTED FROM DISCLOSURE UNDER NEW MEXICO ELECTION LAW

New Mexico Election Law provides:

After all certificates have been executed, the election board shall place the bundles of tabulated paper ballots in the ballot box and the ballot box shall be closed and locked.

Section 1-12-67 (NMSA 1978)

As to the handling of ballot boxes once they are locked New Mexico Election Law further provides:

Once the ballot box has been locked by the prescient board after its first count and tally, no person shall open the ballot box or remove its contents except by court order or as otherwise provided by the Election Code.

Section 1-13-14 (NMSA 1978).

Under New Mexico law, the unauthorized opening of a ballot box is a criminal act.

Unlawful opening of a voting machine consists of, without lawful authority, opening, unlocking, inspecting, or removing the contents thereof without lawful authority, or conspiracy with others to have the same done.

Whoever commits unlawful opening of a ballot box is guilty of a fourth degree felony.

Section 1-20-4 (NMSA 1978).

Askin, or any employees of the Doña Ana County Clerk's office, is prohibited by New Mexico law from opening or removing any item from a locked ballot box. Therefore, the ballots being requested in the subpoena are "protected matter" and therefore under FRCP 45(d)(3)(A)(iii) the Court must quash the Subpoena as to "All Libertarian ballots cast in the 2020 primary election in Doña Ana County."

Askin will comply with the remaining portions of the subpoena.

III.

CONCLUSION

Based on the foregoing, Doña Ana County Clerk Amanda Lopez Askin respectfully requests that this Court enter an order quashing the portion of the Subpoena issued on August 7, 2020, as to the request for "All Libertarian ballots cast in the 2020 primary election in Doña Ana County."

Respectfully submitted,

/s/Nelson J. Goodin
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CERTIFICATE OF SERVICE

I certify that on August 13, 2020, I served the foregoing on counsel of record for all parties via the CM/ECF system.

/s/Nelson J. Goodin
Nelson J. Goodin